IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18713 of 2004

Between:

Mr. Ashish Maheswari, S/o. R.K. Maheswarai,
R/o. Flat No. 401, A-Block, Usha Enclave, Navodaya Colony, Srinagar Colony, Hyderabad - 500 036.

..... PETITIONER

AND

1 The Regional Pass Port Authority, Secunderabad.
2 The Senior Inspector of Police, Immigration SB-II C.I.D. C.S.I. Airport, Mumbai-9.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in seizing the Pass Port bearing Pass Port No. T942976 issued to be petitioner as arbitrary, illegal and violative of fundamental rights guaranteed to the Petitioner under Article 21 of the Constitution of India and direct the Respondents to release the Pass Port to the Petitioner herein in the interest of Justice.

Counsel for the Petitioner :MR. MILIND G GOKHALE

Counsel for the Respondents : MR. A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.18713 OF 2004

ORDER :

The petitioner is the holder of the passport bearing No. T 942976, dated 22-02-1995, issued under The Passports Act, 1967, which is valid upto 21-02-1995.

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in seizing the said passport as arbitrary and illegal and in violation of the fundamental rights guaranteed under Article 21 of the Constitution of India.

In the affidavit filed in support of the writ petition, the petitioner states that while he was travelling from Nyrobi to India and landed in Chatrapathi Shivaji Airport at Mumbai and while going through the immigration, on 14-08-2004 the

second respondent – The Senior Inspector of Police, Immigration, SB-II, CID, CSI Airport, Mumbai-9, seized his passport on the basis of an intimation said to have been received from the Regional Passport Authority, Secunderabad. It is alleged that the 2nd respondent except giving a receipt to the effect that the passport was seized, has not served on the petitioner any order either impounding the passport or otherwise. Thereafter, the 2nd respondent has orally informed him that the passport was sent to the 1st respondent – Regional Passport Authority on 16-08-2004, however no further particulars were furnished in spite of the repeated enquiries made by the petitioner. Hence, this writ petition seeking the above relief.

The main contention raised by the petitioner is that the action of the first respondent in withholding the passport without issuing any notice to the petitioner nor even furnishing a copy of the order of impounding, if any, is arbitrary or illegal and in violation of Section 10(5) of The Passports Act, 1967 (for short, 'the Act') as well as the fundamental rights guaranteed under Article 21 of the Constitution of India.

The 1st respondent – Regional Passport Officer, Hyderabad, filed a counter-affidavit stating that the Police Inspector, Chickpet Police Station, Bangalore city, by letter dated 25-04-2004 informed the 1st respondent that the petitioner is involved in a criminal case and he is figured as an accused in a case registered in Chickpet P.S. as Crime No.93/2003 under Sections 420, 504 & 506-B of the Indian Penal Code (I.P.C.) as per the orders of the IX-ACMM Court, Bangalore City vide P.C.R.No.4717/03, dated 31-03-2003 and that the said case is under investigation and in spite of the constant efforts to secure the presence of the accused for the purpose of investigation, he has been evading the appearance and consequently the investigation could not be completed. It is further stated that in pursuance of the said letter, dated 25-04-2004 the first respondent issued a show-cause notice dated 27-04-2004 calling upon the petitioner to explain as to why the action should not be initiated to impound his passport under Section 10 (3) (e) of The Passports Act, 1967. However, the said letter was returned undelivered with a postal endorsement 'no such person in the given address'. Hence, the passport of the petitioner was impounded under Section 10 (3) (e) of the Act vide Circular, dated 11-06-2004. Subsequently, the Sub-Inspector of Police, Chickpet P.S., Bangalore City, by letter

dated 12-09-2004 informed the first respondent that a charge-sheet has been filed against the petitioner on 02-09-2004 in the Court of IX-ACMM Court, Nrupathunga Road, Bangalore city and the case stands posted to 22-01-2005 and requesting the first respondent to impound the passport till the final disposal of the said case. In the circumstances, it is contended that the action of the respondent in impounding the petitioner's passport vide Circular, dated 11-06-2004 is in accordance with the provisions of Section 10(3)(e) of The Passports Act, 1967 and the writ petition is misconceived and liable to be dismissed.

Though the petitioner has not filed any affidavit-in-reply, the learned Counsel for the petitioner contends that since admittedly the show-cause notice dated 27-04-2004 was not served on the petitioner, there was no opportunity to him to submit his explanation and thus the action of the first respondent impounding the passport under the Circular dated 11-06-2004 is arbitrary and illegal and in violation of the principles of natural justice. The learned Counsel, in support of his contention, placed reliance upon the decision in MANEKA GANDHI vs. UNION OF INDIA.

The learned Counsel further contends that since even according to the respondents there is no order as such by the IX-Addl. Chief Metropolitan Magistrate, Bangalore, where the proceedings are pending against the petitioner, to impound the passport of the petitioner, the first respondent ought not to have impounded the passport of the petitioner. He also submits that under sub-Section (5) of Section 10 of the Act whenever the Passport Authority makes an order impounding a passport, it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport a copy of the same and since the petitioner was never furnished with a copy of any such order in spite of the request made by him nor has shown any reason for withholding his passport, the entire action of the respondents is liable to be declared as arbitrary and illegal.

On the other hand, the learned Counsel appearing for the first respondent submits that since there is no dispute about the fact that the petitioner is shown as an accused in C.C.No.13227 of 2004 pending in the Court of the IX-Addl. Chief Metropolitan Magistrate, Bangalore, there is absolutely no reason to hold that the

action of the first respondent in impounding the passport of the petitioner vide circular dated 11-06-2004 under Section 10(3)(e) of the Act is either arbitrary or illegal. He also contends that a show-cause notice was issued by the first respondent on 27-04-2004 to the address furnished by the petitioner in the passport and therefore it cannot be said that the action of the 1st respondent in impounding the passport is in violation of the principles of natural justice. He submits that on the basis of the Circular, dated 11-06-2004, the second respondent has rightly seized the passport of the petitioner on 14-08-2004 and therefore the interference of this Court is not warranted.

It is to be noted that Section 10 of the Act provides for variation, impounding and revocation of passports and travel documents. Sub-Section (3) of Section 10 of the Act which provides for impounding of passport or travel document runs as under :

> *" (3) The passport authority may impound or cause to be impounded or revoke a passport or travel document.*
>
> *(a) … … … …*
>
> *(b) … … … …*
>
> *(c) … … … …*
>
> *(d) … … … …*
>
> *(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;*
>
> *(f) … ... … … …*
>
> *(g) … … … … …*
>
> *(h) … … … … …*
>
> *(i)… … … … …"*

It is also relevant to extract sub-Section (5) of Section 10 of the Act which runs as under :

> *"Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a*

passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy."

On a perusal of the above provisions, it is clear that the pendency of the proceedings before a Criminal Court in India in respect of an offence alleged to have been committed by a holder of passport is a valid ground for impounding a passport. Since admittedly the first respondent has impounded the passport of the petitioner in exercise of power under Section 10(3)(e) of the Act, I am unable to hold that the same is without jurisdiction merely on the ground that there was no order by the IX-Addl. Chief Metropolitan Magistrate, Bangalore for impounding the passport. Nothing has been placed before this Court to show that such order of the Court is necessary for impounding the passport by the first respondent, who is the competent authority as defined under Section 10(c) of the Act read with Rule 3 and Schedule-I to the Passport Rules, 1980 (for short, 'the Rules).

Then, the further question that requires consideration is whether the procedure adopted by the respondents in impounding the passport of the petitioner is in violation of the principles of natural justice.

On the basis of the documents filed along with the counter-affidavit of the first respondent, it is clear that the Inspector of Police, Chickpet P.S., Bangalore city, by letter dated 25-04-2004 informed the first respondent that the petitioner is presently residing at '401, A-Block, Usha Enclave - Navodaya Colony, Srinagar Colony, Bajara Hills, Hyderabad-500 034'. The 1st respondent issued the show-cause notice dated 27-04-2004 in pursuance of the information furnished by the Inspector of Police, Chickpet P.S., Bangalore City in his letter dated 25-04-2004, however, the show-cause notice was sent to a different address and admittedly the said notice was returned unserved with an endorsement that 'no such person available'. May be

that, the petitioner failed to inform his change of address to the 1st respondent, but when admittedly the 1st respondent was informed by the Chickpet P.S. the present address of the petitioner, there is no reason why the show-cause notice was not sent to that address. The law requires issuance of a show-cause notice so as to afford an opportunity to the affected party to explain his version which has to be considered by the competent authority before passing a final order. In the case on hand, it is not in dispute that the notice was sent to an address where the petitioner was not residing and the same was returned unserved. Thus, the fact remains that the petitioner had no opportunity to submit his explanation before his passport was impounded. Hence, the mere fact that the 1st respondent issued the show-cause notice dated 27-04-2004 cannot be held to be sufficient compliance with the principles of natural justice. That apart, the specific allegation of the petitioner that the second respondent while seizing the passport on 14-08-2004 has neither furnished a copy of the order of impounding nor even informed him about the factum of impounding, has not been disputed in the counter-affidavit filed by the respondents. It is also relevant to note that nothing has been placed before this Court to show that apart from the Circular dated 11-06-2004 there was any order as such by the first respondent impounding the passport of the petitioner and whether such order was communicated to the petitioner. Thus, as rightly contended by the learned Counsel for the petitioner, the entire procedure adopted by the respondents is arbitrary resulting in denying an opportunity to the petitioner to avail the remedy of statutory appeal provided under Section 11 of the Act, which requires to be filed within 30 days as prescribed under Rule 14 of the Rules. In the circumstances, I hold that the action of the first respondent in impounding the passport of the petitioner through the Circular dated 11-06-2004 is arbitrary and violative of the principles of natural justice and liable to be set aside.

Accordingly, the Circular, dated 11-06-2004, so far as the petitioner herein is concerned is set aside and the Writ Petition is disposed of granting liberty to the petitioner to submit his explanation to the show-cause notice, dated 27-04-2004 (a copy of which has been filed along with the counter-affidavit of the first respondent) within a period of two weeks from today, in which event, the same shall be taken into consideration by the first respondent before passing appropriate orders in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

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February, 2005.

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To

1 The Regional Pass Port Authority, Secunderabad.
2 The Senior Inspector of Police, Immigration SB-II C.I.D. C.S.I. Airport, Mumbai-9.

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